S.B. Civil Writ Petition No.798/06
Yogesh Chand Tiwari Vs. State & Ors.

Date of Order : 11/07/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Y.C. Sharma, for petitioner
Mr. B.K. Sharma, Dy.G.A. for State
Mr. Prem Kumar Sharma, for respondent No.3

This matter has come up on application filed under Article 226(3) of the Constitution for vacation of ex-parte stay order passed by this court dated 10th February, 2006.

With the consent of parties, the writ petition is finally decided at this stage itself.

Instant petition has been filed against the order dated 7th January, 2006 [Ann.5] whereby the respondent State in view of ex-parte stay order passed by the learned Service Appellate Tribunal in Appeal No.1215/05 has kept the order of transfer in abeyance. As a consequence whereof, the petitioner was asked to report at the place from where he was transferred under the order impugned before the Tribunal dated 30th October, 2005 [Ann.1].

Petitioner and respondent No.3, both are working as Junior Engineer in the Department of Irrigation and respondent No.3 was transferred vide order dated 30th October, 2005 from Irrigation Division, Alwar to Hanumangarh and the present petitioner was transferred at his place from Malpura to Irrigation Division, Alwar vice respondent No.3. Respondent No.3 being aggrieved by the order of his

transfer, challenged the same by filing appeal before the Service Appellate Tribunal and the learned Tribunal granted him ex-parte stay order on 30th November, 2005 whereby the operation of the order of transfer was stayed. This is not in dispute that the petitioner has not so far been heard in the matter, but because of stay granted by the learned Tribunal of the order impugned the State Government has put the order of transfer in abeyance vide order Ann.5. As a consequence whereof, the petitioner despite the fact that he joined at the place of his posting in pursuance of order Ann.1 has now been asked to go back to the place from where he was transferred under the order impugned. Hence, this petition.

This court while issuing notice, stayed the operation of order Ann.5 dated 7th January, 2006 and it has been informed that at present both of them are working at Alwar and the appeal filed before the Tribunal has so far not been heard even on stay application.

Counsel for petitioner submits that once he has joined in pursuance of order of transfer dated 30th October, 2005, even if the learned Tribunal has stayed the operation of said order that in no manner will disturb atleast the present petitioner unless he is being heard in the matter pending before the Tribunal. In such circumstances, passing of order by the State Government without affording opportunity to him under the order impugned dated 7th January, 2006, is in clear violation of principles of natural justice and he has not been provided any opportunity either before the Tribunal or any other forum so far as it relates to order in question is concerned.

Counsel for respondent No.3, on the other hand, submits that once the operation of the order has been stayed, the respondent State has not committed any error in keeping the order impugned in abeyance while passing the order impugned dated 7th January, 2006.

Counsel for respondent-State also submits that once the operation of order has been stayed, position existing prior to passing of order impugned has to be restored back. As such, there was option left with the authorities in keeping the order in abeyance and to restore back the position existing prior to the order impugned in the appeal before the Tribunal.

The matter pertains to transfer inter se amongst petitioner and respondent No.3 and the matter is pending before the Tribunal for adjudication, any observation made at this stage, may affect the right of either of parties to the dispute. But, this fact remained undisputed that the present petitioner has so far not been heard even on stay application with regard to ex-parte stay order passed by the Tribunal.

In my opinion, in the absence of parties being heard, the State Government was not justified in passing of order in disturbing the petitioner while passing order Ann.5 dated 7th January, 2006 atleast at the stage when he was not even heard on the stay application pending before the Tribunal.

Consequently, I allow the writ petition with the direction that the Tribunal may decide the

Appeal No.1215/05 expeditiously within a period of two months and till then status-quo with respect to their respective posting may continue and this arrangement will be subject to decision of appeal on merits by the Tribunal. Copy of the order be sent to the Tribunal for compliance.

[Ajay Rastogi],J.

FRB